

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio Services

Applicant for Modification of Various  
Authorizations in the Wireless Radio  
Services

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962.

Applicant with ENCANA OIL AND GAS (USA), INC.;  
DUQUESNE LIGHT COMPANY;  
DCP MIDSTREAM, LP;  
JACKSON COUNTY RURAL MEMBERSHIP  
ELECTRIC COOPERATIVE;  
PUGET SOUND ENERGY, INC.;  
ENBRIDGE ENERGY COMPANY, INC.;  
INTERSTATE POWER AND LIGHT COMPANY;  
WISCONSIN POWER AND LIGHT COMPANY;  
DIXIE ELECTRIC MEMBERSHIP CORP., INC.;  
ATLAS PIPELINE—MID CONTINENT, LLC;  
DENTON COUNTY ELECTRIC COOPERATIVE,  
INC., d/b/a COSERV ELECTRIC; and  
SOUTHERN CALIFORNIA REGIONAL RAIL  
AUTHORITY

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**ENL-VSL TRIAL BRIEF ON ISSUE (G)**

James A. Stenger  
Chadbourne & Parke, LLP  
1200 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 974-5682

November 25, 2014

## SUMMARY OF ARGUMENT

Environmental LLC (“ENL”) and Verde Systems, LLC (“VSL”) submit this trial brief and Mr. Havens joins in this filing (together “EVH”).

Maritime discontinued service at all 16 of the site-based locations that are the subject of Issue (g) in 2007 or 2009, according to their own admissions. Maritime put the spectrum up for sale. Now, five to seven years later, Maritime continues to claim that Maritime did not permanently abandon the stations because Maritime is continuing to seek to sell the spectrum, either directly or indirectly through Choctaw.

There is simply no basis in FCC law for a licensee to discontinue operations indefinitely and for a multiple of the construction period meant to prevent warehousing (§80.49),<sup>1</sup> and retain the authorizations on the basis that the licensee is attempting to market the spectrum. Setting such a precedent would be contrary to long-standing Commission policies against spectrum warehousing and would be contrary to the public interest in ensuring that spectrum is used to serve the public.

Maritime attempts to point to certain deals that Maritime has done as evidence to support its claim of non-abandonment. All of these deals point to exactly the opposite conclusion,

---

<sup>1</sup> Two years for AMTS stations in a system: all AMTS stations must be in a system with overlapping service contours required in §80.475(a) (1999). However, single-station public coast stations have only a one-year construction period under §80.49(a)(1). MCLM has no evidence of any service contour for any of the 16 stations. Apart from not meeting the requirement of §80.475(a)(1999) the deemed anti-warehousing period for them should be one year. The threshold rule to prevent warehousing is the construction deadline rule. AMTS is CMRS, which is a service, and CMRS “construction” means commencement of service operation. Thus, it is contrary to the anti-warehousing policy to find that operations can be discontinued without termination for longer then the construction period. Maritime turns this policy on its head by asserting that the stations were constructed (of some sort) but that after that event, it can discontinue CMRS services without termination for multiples of this threshold anti-warehousing period of time.

namely that operation of the licensed stations has been permanently discontinued.<sup>2</sup> Maritime claims it has agreements to sell, and in the interim lease, spectrum to Puget Sound Energy (“PSE”), Evergreen School District (“Evergreen”), Duquesne Light Company (“Duquesne”) and Pinnacle Wireless (“Pinnacle”). None of them are operating at any of the 16 site-based locations nor have any cognizable plans to do so.

Despite the admission that none of the 16 site-based locations are “operating” to any degree (what to speak of providing service), Maritime erroneously claims that PSE, Evergreen, Duquesne and Pinnacle are allowed to operate “fill-in” stations. As legal argument this fails because a “fill-in” station is only one that operates within the actual service contour of an existing system. Even if the rules and case law were not fatal to the legal argument, Maritime does not even have the facts to support its “fill-in” station claim. It does not even have evidence to support assertion of any actual service contours at all, which cannot exceed what was in actual service at the FCC’s suspension-freeze of the stations.<sup>3</sup>

Maritime offers no testimony from PSE for the obvious reason that PSE cannot claim to operate “fill-in” stations because PSE is the co-channel geographic area licensee and is operating

---

<sup>2</sup> This is contradicted by §1.946(3)(3): (3) “Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.” Emphasis added.

<sup>3</sup> See: PR Docket 92-257, 4th R&O and 3rd FNPRM, Rel. November 16, 2000, FCC 00-370, ¶¶ 76-77 . The suspension in this Order was following by another Order making the suspension permanent (the “freeze”) (emphasis added):

76. In light of the fundamental changes we have proposed for our AMTS ... public coast station licensing rules, we are suspending acceptance of applications for new licenses, applications to modify existing licenses, and amendments to applications for new licenses or modifications, for AMTS (217-220 MHz)....

77. We will continue to accept and process applications for such frequencies involving renewals, transfers, assignments, and modifications, and amendments to such applications, that propose neither to expand a station's (or AMTS system's) service area or to obtain additional spectrum.

a PLMRS system under its geographic area licenses (which were sold to PSE by EVH as shown in Commission records).

Evergreen admits it ceased all operations on Maritime spectrum, and indeed is not using any AMTS spectrum as of September 7, 2014. Apparently, the Bureau will now acknowledge that Maritime permanently abandoned the two KAE889 locations (3 and 13) that Maritime claims Evergreen was using. If so, that fails to explain why the Bureau does not acknowledge that WHG750 also was permanently abandoned, since Duquesne admits that as long ago as 2012, *i.e.*, two years ago, Duquesne ceased operating some facilities that allegedly used Maritime spectrum, and Duquesne ceased using any Maritime spectrum “later.” The same applies to and the rest of the 16 stations.

Only Pinnacle claims to operate what it characterizes as “fill-in” stations to allegedly serve the State of New Jersey, but with no evidence or witness(es) from the State. However, Pinnacle’s testimony does not support Maritime’s claim to non-abandonment of eight locations on WRV374. Pinnacle alleges to have ongoing valid FCC-accepted leases both site-based spectrum and geographic area spectrum from Maritime.<sup>4</sup> According to Pinnacle, its alleged PLMRS system uses Maritime geographic area spectrum in southern New Jersey and Maritime site-based spectrum in Northern New Jersey. As to the site-based spectrum, Pinnacle stated in two separate answers to interrogatories that it leases only two locations on WRV374, locations

---

<sup>4</sup> However, the alleged lease or leases are not supported in ULS records. The same applies to the other entities involving the 16 Stations alleging fill-in stations. While some lease applications were filed, they were either not acted on by the Wireless Bureau, or prior to FCC 11-64, were accepted by the FCC but terminated or expired years ago. The details are on ULS. It appears that the Wireless Bureaus has logically applied the Jefferson Radio policy to MCLM leasing after FCC 11-64 was released and that Martime and these parties alleging fill-in stations have accepted that and not attempted to submit and get FCC acceptance of any leases in many years. In any case, the assertions before the Presiding Judge in this proceeding are contrary to official FCC ULS lease records. Fill-in stations operated under invalid leases are unlawful and cannot count for anything but sanctionable violations.

15 and 25. Assuming this sworn testimony was accurate when given, Maritime cannot rely on Pinnacle to attempt to argue non-abandonment of the other six locations on WRV374.

No matter what locations on WRV374 Maritime claims that Pinnacle is or was using, the Pinnacle PLMRS system does not qualify as AMTS “fill-in” stations because Pinnacle admits there are no existing site-based licensed stations and no plans to reactivate them. Indeed, Pinnacle admits that any resumption of operations at the site-based locations would interfere with its PLMRS system. Incredibly, Maritime claims that this alleged interference potential excuses Maritime’s discontinuance of operation of the main stations, a notion that is completely at odds with the requirement that a “fill-in” station can only operate within the actual service contour of an existing station.

Pinnacle’s claim that it uses Maritime spectrum to serve the New Jersey Turnpike Authority (NJTA) and New Jersey Sports and Exposition Authority (NJSEA) rings hollow where Maritime offers no testimony from either of those entities.<sup>5</sup> Ironically, the Bureau objected to portions of Steve Calabrese’s testimony as hearsay when, under the same standard, the entire testimony of Pinnacle is hearsay as to the needs and intentions of NJTA and NJSEA. In contrast to the Pinnacle hearsay testimony, the Commission’s own public records show that NJTA and NJSEA are public safety entities that have access to 800 MHz spectrum and no need to use the former Maritime spectrum.

In sum, there is no valid Maritime case that requires rebuttal.

---

<sup>5</sup> Pinnacle has submitted documents on an alleged Attorneys-Eyes-Only highly confidential basis, but the State of New Jersey is releasing the Mr. Havens of EVH the documents requested that relate to Pinnacle, Maritime, and AMTS spectrum with no confidentiality or other release-exceptions asserted. Once the remainder of these are released, EVH will present the most relevant documents for the hearing, as the undersigned discussed with the Presiding Judge at a pre-hearing conference. The publicly released documents received to date do not support Pinnacle’s claims but show, *inter alia*, that the State has decided to use 800 MHz, and that Pinnacle had to get an STA for using the AMTS spectrum in lieu of a FCC accepted lease, etc. and that STA ran out long ago.

Nevertheless, EVH offers written testimony from Steve Calabrese because his testimony shows that Maritime did not simply discontinue operation of the stations and disclose the matter to the Commission in a forthright manner. On the contrary, Maritime used certain technology that it acquired from Mr. Calabrese's company, Critical RF, to create what Maritime called "channel markers." These "channel markers" are devices that play recorded voice or data transmissions in an attempt to make it appear that the stations are being used to serve customers when they were not. In doing this Maritime willfully, intentionally and repeatedly misled the Commission, other licensees and the public, and lacked candor. The use of these "channel markers" and the resultant willful, intentional and repeated misrepresentations and lack of candor are enough to disqualify Maritime from continuing as a Commission licensee. Even apart from the Calabrese testimony, Maritime admitted in a stipulation several months<sup>6</sup> ago that it permanently abandoned approximately 90% of all of its stations causing automatic termination in past years, which is admission of unlawful warehousing of spectrum nationwide for up to two-plus years, and it used the terminated stations as bargaining chips in its joint stipulation and proposed settlement in December 2013. This caused EVH and the Presiding Judge and his staff years of useless wasteful litigation over dead stations Maritime would not admit to, until the recent stipulation. This is unlawful warehousing, misrepresentation, and lack of candor at the an extreme level.

---

<sup>6</sup> Joint Stipulation Between the Enforcement Bureau and Maritime on Discontinuance of Operations of Previously Stipulated Site-based Facilities, by Maritime and Enforcement Bureau, filed September 11, 2014. See also Maritime's Response to Interrogatories, filed August 4, 2014.

**Table of Contents**

	<b><u>Page</u></b>
I. EVH WILL PROVE THAT MARITIME PERMANENTLY DISCONTINUED OPERATION OF THE 16 STATIONS AND THE AUTHORIZATIONS AUTOMATICALLY CANCELLED .....	2
II. THE STATIONS AND ANY FILL-IN STIONS ARE INVALID DUE TO NO SERVICE CONTOURS AND THE ALLEGED LEASES ARE UNLAWFUL .....	5
III. EVH SHOWS THAT MARITIME ENGAGED IN MISREPRESENTATION AND LACK OF CANDOR WILLFULLY, INTENTIONALLY AND REPEATEDLY .....	6
IV. THE APPLICABLE LEGAL STANDARD IS CLEAR AND INDISPUTABLE.....	7
A. Putting Spectrum Up For Sale Does Not Excuse Discontinuance of Operations .....	8
B. The <i>Northeast Utilities</i> Case Mandates A Finding Of Permanent Discontinuance ..	9
C. Fill-in Stations Cannot Preserve Discontinued Site-Based Authorizations .....	11
D. The Bureau Has Offered No Contrary Authority .....	14
1. Fill-in Stations Do Not Excuse Abandonment Of The Main Station .....	16
2. Abandoned Authorizations Cannot Be Sold To Public Safety Entities.....	18
3. Alleged Fill-in Operations Are Unauthorized .....	19
V. THE FACTS SHOW THAT ALL 16 AUTHORIZATIONS ARE PERMANENTLY DISCONTINUED AND AUTOMATICALLY CANCELLED.....	20
A. PSE Is Not Operating The Authorized Stations Or Any Fill-in Stations .....	21
B. Evergreen Is Not Operating Any Maritime Or Other 220 MHz Spectrum .....	26
C. Duquesne Is Not Operating Any Maritime Spectrum .....	27
D. The New Jersey Entities Do Not Need Maritime Spectrum .....	28
E. Pinnacle Credibility Is Subject To Doubt.....	31
F. The Self-Serving Testimony of Maritime and Choctaw Is Entitled To No Weight	33
VI. CONCLUSION.....	34

## ENL-VSL TRIAL BRIEF

Environmental LLC (“ENL”) and Verde Systems LLC (“VSL”), through their undersigned counsel, hereby provide their Trial Brief. Mr. Havens joins in this filing (collectively “EVH”). This Trial Brief is intended to comply with the instructions of the Presiding Judge by clerk’s email of November 4, 2104, that the Trial Brief should contain at least the following:

- I. A concise proffer of what each party intends to prove.
- II. A brief summary of to what each witness is expected to testify in support of the proffer of proof.
- III. Points and authorities on anticipated evidentiary, procedural, and substantive issues, citing only key cases and authorities relied on.

These points are covered in the following sections of this Trial Brief. Initially, EVH notes that the Presiding Judge issued yesterday, on November 24, 2014, FCC 14M-36 in which the Judge references the EVH Motion for Summary Decision and related EVH pleadings and then decides that “the Presiding Judge intends to avail himself of facts ... and circumstances attendant to the hearing before ruling on the Motion.” Thus, as the foundation of its hearing or trial brief, EVH first references and incorporates herein their Motion and related pleadings.<sup>7</sup> There is no need to fully restate those herein since the Judge has already stated he will consider and decide upon those for the disposition of issue G.

---

<sup>7</sup> Except that as used by reference herein, EVH does not, as in the Motion, deem the facts asserted by Maritime and the Bureau as valid for purposes of argument. Instead, EVH contests that those facts are credible and properly supported. Given that FCC 14M-36 was only released yesterday, however, EVH did not have sufficient time to reduce redundancy between these referenced and incorporated materials and the text of this filing.

**I. EVH WILL PROVE THAT MARITIME PERMANENTLY DISCONTINUED OPERATION OF THE 16 STATIONS AND THE AUTHORIZATIONS AUTOMATICALLY CANCELLED**

EVH can rely upon the direct case testimony offered by the Maritime and the Bureau in addition to its own direct case testimony and documents, all of which prove that Maritime discontinued operation of the 16 stations in 2007 and 2009 by Maritime's own admission, and that none of the alleged purchasers or lessees are operating or intend to operate any of the stations. EVH also will show from their testimony and EVH documents that the alleged lessees are not operating alleged fill-in stations. Puget is the geographic area licensee, not a fill-in station operator. Evergreen and Duquesne are not operating any stations using Maritime spectrum. Pinnacle is the geographic area lessee in southern New Jersey and therefore is not using Maritime site-based spectrum in that area. In northern New Jersey where Pinnacle allegedly is leasing Maritime site-based spectrum, its operations do not qualify as "fill-in" stations because they are not operating within the actual service contours of an existing AMTS system.

The Hearing Designation Order ("HDO") directs Maritime to show cause why its licenses should not be revoked, but Maritime offers no direct case other than a Joint Stipulation that agrees to cancel numerous licenses that were long ago abandoned, if they were ever constructed or operated at all. None of them are any of the 16 licenses at issue at the hearing. So the Joint Stipulation is either irrelevant or at best is an admission that Maritime abandoned all of its other stations, raising a strong presumption that it also abandoned the remaining 16 authorizations.<sup>8</sup>

---

<sup>8</sup> Incredibly, Maritime offers this Joint Stipulation as its entire Direct Case, despite the fact that Maritime has done nothing to implement the Joint Stipulation. Maritime claims that ULS is preventing Maritime from implementing the Joint Stipulation. This is unsupported by any evidence that Maritime has contacted anyone at the Wireless Telecommunications Bureau (WTB), where the Staff are equipped to manually address any issues presented by the ULS system.

The Enforcement Bureau (“Bureau”) in an exercise of what it deems “prosecutorial discretion” is putting on a direct case that consists of Maritime and Choctaw witnesses and their alleged spectrum purchasers/lessees.<sup>9</sup> The alleged excuse is that the HDO puts the burden of proceeding and proof on the Bureau. However, what that means is the Bureau has the burden of proving the Commission case for revocation, not the licensee case for retaining its licenses. The Commission’s rules state that the Bureau is to act as counsel to the Commission, not the party subject to the Order to Show Cause.<sup>10</sup>

The Bureau case does not amount to anything that requires rebuttal from EVH. Maritime admits it ceased operations in 2007 or 2009. This far exceeds any discontinuance of operations that the Commission has allowed, so it is unsurprising that the Bureau offers no precedent to allow Maritime to retain the 16 authorizations. The notion that Maritime is marketing the spectrum, if accepted as an excuse, would make a mockery of the Commission’s anti-warehousing rules, as the Bureau itself asserted in this same case.

PSE declined to testify for the obvious reason that PSE is the geographic area licensee as shown in Commission records and as admitted in its Answers to the Bureau’s interrogatories. Thus, it is plain that PSE is not using Maritime spectrum, without even the need for written testimony. The written testimony of Evergreen and Duquesne candidly admits they no longer use Maritime spectrum. So there is nothing for EVH to rebut as to KAE889 and WHG750, those licenses clearly were permanently abandoned and automatically cancelled.

---

<sup>9</sup> This follows the Bureau filing literally dozens of pleadings that attack EVH. Maritime has filed virtually no pleadings against EVH having been saved the expense of doing so by the Bureau which at taxpayer expense has vociferously attacked EVH throughout this entire proceeding.

<sup>10</sup> 47 C.F.R. § 0.111(b).

At bottom, this hearing is about the claim of Pinnacle that it is using Maritime spectrum to serve NJTA and NJSEA. On that point, the testimony that the Bureau obtained from Pinnacle is simple and stark: Pinnacle is not operating and has no intention of operating any of the Maritime site-based stations on WRV374. Given the candid admission that Pinnacle is not operating and has no intention of operating any of the site-based authorizations on WRV374, it is obvious that the Pinnacle alleged PLMRS system does not qualify as “fill-in” stations, and even if it did, fill-in stations do not preserve the main station from a finding of permanent discontinuance, as the Presiding Judge has already ruled in this case.

Nevertheless, to the extent that the Presiding Judge wishes to delve further, EVH offers several observations in rebuttal. First, the Bureau failed to submit testimony from NJTA and NJSEA to support the claim that Pinnacle is using Maritime spectrum to serve them. Second, the credibility of Pinnacle is questionable given that Pinnacle principals have engaged in fraudulent conduct. Third, FCC records and FOIA results from New Jersey show that NJTA and NJSEA have their own 800 MHz licenses and do not need Pinnacle or Maritime. And, fourth, the FCC records further show that Pinnacle lacks FCC approval for whatever operations it may be conducting. EVH is prepared to proffer documentary evidence on these points.

EVH is not required to rebut the Maritime and Bureau direct cases, since those cases inevitably must lead to the conclusion Maritime permanently abandoned all 16 stations. However, EVH offers rebuttal testimony from Steve Calabrese to show that Maritime not only abandoned the 16 stations, but also engaged in misrepresentation and lack of candor, as described in the next section.

**II. THE STATIONS AND ANY FILL-IN STIONS ARE INVALID DUE TO NO SERVICE CONTOURS AND THE ALLEGED LEASES ARE UNLAWFUL**

For reasons given in the Summary and in the referenced and incorporated EVH Motion and its related pleading, which will not be fully repeated here: the licensed stations and alleged past or current fill-in stations are all unlawful and thus invalid and void since (i) no licensed station can be operated after the cited FCC suspension-freeze of AMTS site-based service contours, unless the actual service contour that was suspended-frozen can be demonstrated, and subsequent service contours were with the suspended-frozen contour; and (ii) since fill-in stations' contours must be within the permitted contour of the licensed station (§80.475(b)),<sup>11</sup> and thus, there can be no lawfull fill in stations given “(i)” above; and (ii) since all of operations alleged by Maritime and the purported lessees are PMRS, not CMRS, and as PSE properly recognized, to use AMTS for PMRS requires an application under §20.9(b) submitted to the FCC, placement on a 30-day public notice and grant—and none of the purported lessees have submitted and received grants of PMRS authority under this rule.<sup>12</sup> The matters of this Section III alone fully dispose of Issue G as to holding the 16 stations void as unlawful, and automatically terminated, even if there were any service-operations. However, the additional

---

<sup>11</sup> This rule references an “interference contour.” The interference “contour” is a dB difference at the service contour as described in §80.385(b)(1). The only “contour” in FCC rules for site-based AMTS is the service contour described in, and determined by the method in, §80.385(b)(1) that discusses site-based AMTS stations. A “station” is defined in Part 80 rules as follows: Station. “One or more transmitters or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on radio communication services.” This makes clear that a “station” is an the actual physical radio base station for services—it is not the what is shown on the license by the coordinates, and maximum permitted transmitter power and antenna height.

<sup>12</sup> As shown on ULS under Call Sign KAE889, PSE applied for a lease (that has not been accepted) and at the same time applied for PMRS authority by submitting an application under §20.9(b). However, that PMRS-authority application was never placed on public notice (and never granted).

material below are presented as alternative demonstrations that the 16 stations have all automatically terminated that are also sufficient by themselves.

**III. EVH SHOWS THAT MARITIME ENGAGED IN MISREPRESENTATION AND LACK OF CANDOR WILLFULLY, INTENTIONALLY AND REPEATEDLY**

The testimony of Steve Calabrese shows that Maritime engaged in intentional, willful and repeated misrepresentation and lack of candor. Specifically, Maritime used so-called “channel markers” to make it appear that stations were serving the public when in fact the technology was only used to replay recorded voice or data transmissions. Mr. Calabrese also testifies about Maritime’s removal and sale of former station equipment which further shows that the so-called channel markers did not comprise legitimate station operations and may not even have been operated at the licensed sites.

Maritime claims that it invested in Critical RF in order to develop a legitimate business and support continued operation of its stations. On the contrary, the acquisition was for the purpose of conducting an elaborate fraud on the Commission to make it appear that Maritime had not permanently abandoned stations. In fact, Maritime not only discontinued operations, it dismantled and sold the equipment. Maritime decided that it could not continue to operate and that it would sell all the spectrum. Commission rules do not allow a licensee to hold onto to spectrum licenses for years, in this case five to seven years, while the licensee seeks to sell the spectrum. Maritime principals were experienced FCC licensees and were well-aware of this. That is why they concocted the scheme of using Critical RF technology to create “channel-markers” to make it appear the stations were still in operation.

The circumstances clearly show that Maritime had a motive to deceive the Commission and therefore it must be concluded that Maritime’s actions in using the “channel markers” was

intentional and willful. Since the “channel-markers” were used numerous times, Maritime’s unlawful conduct was repeated. Such willful, intentional and repeated misrepresentation and lack of candor should be sanctioned, and, at a minimum should not be rewarded by allowing Maritime to retain any of the 16 authorizations.

#### **IV. THE APPLICABLE LEGAL STANDARD IS CLEAR AND INDISPUTABLE**

The Commission decided to transition the AMTS band to geographic area licensing. This licensing regime allows the use of modern, cellular technology, based on low power/low site facilities that efficiently reuse the spectrum, like other cellular radio systems, and cause less interference to adjacent television stations. Under geographic licensing, stations can be placed anywhere within the geographic service area, without specific site-based authority.<sup>13</sup>

Geographic area licensees are required to protect incumbent site-based licensees.<sup>14</sup> But geographic area licensees are only required to protect the actual service contours of site-based stations, not their licensed parameters.<sup>15</sup> An incumbent licensee’s contours cannot be expanded or moved.<sup>16</sup> Where an incumbent site-based licensee discontinues operations, the spectrum reverts to the geographic licensee.<sup>17</sup>

It is undisputed that Maritime discontinued provision of service at the 16 locations that are the subject of Issue (g) and decided to sell/lease the spectrum to third parties, namely PSE,

---

<sup>13</sup> Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685 (2002)(“Fifth Report and Order”), paras. 23-26.

<sup>14</sup> Fifth Report and Order at paras. 30-35.

<sup>15</sup> Dennis C. Brown, Letter Ruling, 24 FCC Rcd 4135 (Apr. 8, 2009); aff’d on reconsideration, Maritime Communications/Land Mobile, LCC, [DA 10-664] (Apr. 19, 2010).

<sup>16</sup> Fifth Report and Order at para. 34.

<sup>17</sup> *Id.*

Duquesne and Pinnacle. It also is undisputed that PSE, Duquesne and Pinnacle are not providing service from any of the 16 locations, nor do they plan to in the future.

Thus, the undisputed facts show that in the Pacific Northwest area that involves KAE889 and in the Mid-Atlantic area that involves WHG750 and WRV374, no service is provided or planned at any of the 16 authorized locations. Under the rules that govern AMTS under geographic licensing, Maritime lost its rights to protection of its legacy site-based authorizations and the spectrum reverted to the geographic area licensee.

**A. Putting Spectrum Up For Sale Does Not Excuse Discontinuance of Operations**

The essence of the Maritime/Bureau case seems to be that, although Maritime admits it discontinued operation of the 16 stations *five to seven* years ago, Maritime can retain the authorizations because Maritime has been trying to sell the spectrum. There is no precedent that a licensee can turn off a station but retain the license for years on the basis that the licensee is trying to sell the spectrum. On the contrary, the Commission rules specifically say, for example, that attempting to sell a station does not excuse failure to construct it on time:

Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.<sup>18</sup>

Public Mobile Services stations generally are considered permanently discontinued after a total of 120 days, *i.e.*, six months:

For purposes of this section, any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the

---

<sup>18</sup> Construction and coverage requirements for the Wireless Radio Services, 47 C.F.R. §1.946(e)(3).

end of the 90 day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days.<sup>19</sup>

The notion that the absence of a specific rule under Part 80 justifies departure from the six month norm to the point of allowing discontinuance of operations for *five* to *seven* years does not comport with any Commission policy governing spectrum use or similar treatment for similarly situated licensees.

The Maritime/Bureau direct case is an unabashed plea to allow licensees to engage in unlimited spectrum warehousing, so long as they claim they are looking for a buyer. This is flatly contrary to Commission policy as the Bureau well knows and has said in this case.

**B. The Northeast Utilities Case Mandates A Finding Of Permanent Discontinuance**

In *Northeast Utilities Service Company*, 24 FCC Rcd 3310, DA 09-643 (Mar. 20, 2009), the Wireless Telecommunications Bureau (WTB) had to decide whether destruction of the World Trade Center resulted in permanent discontinuance and cancellation of the site-based AMTS station WQA216 licensed to Paging Systems, Inc. (“PSI”), and whether Northeast Utilities Service Company (“NUSCO”), the geographic area licensee, no longer was required to protect the PSI site-based authorization.

The WTB concluded that it would not retroactively apply to Part 80 licensees the discontinuance of service rules in other rule parts which set time limits for discontinuance of service.<sup>20</sup> WTB went on to state that in the absence of a specific time limit being applied

---

<sup>19</sup> Discontinuance of station operation, 47 C.F.R. §22.317.

<sup>20</sup> Note that this decision was released in 2009, so to the extent that Maritime discontinued service after that date, application of a time limit to Maritime would not involve retroactivity and Maritime would be on fair notice. The rules have various time limits for discontinuance of service, but none allow discontinuance for more than a year. Maritime cannot dispute that the 16 stations have been out of service for more than a year. However, the Presiding Judge need not rely on this, since even under a case-by-case analysis with no set time limits, summary decision is required.

retroactively to Part 80 AMTS licensees, the WTB would “evaluate claims of permanent discontinuance on a case-by-case basis.”<sup>21</sup> PSI claimed that it intended to restore service and was looking for an alternative site. By contrast, Maritime attempt to sell/lease its site-based authorizations to PSE, Duquesne and Pinnacle and each of them states that they are not providing service from the former Maritime sites and have no plans to do so.

In the *Northeast Utilities* case the loss of the site was involuntary and PSI involuntarily discontinued service while it attempted to resume operations at a replacement site. One of Maritime’s 16 sites was located at the World Trade Center. But Maritime voluntarily discontinued service at the other 15 disputed locations.

Under *Northeast Utilities* involuntary loss of a site and efforts to restore service saved PSI from a finding of permanent discontinuance. Maritime’s voluntary discontinuance of service at 15 sites with no plans to resume service must be judged to fail to meet that standard. Where the discontinuance of service at 15 of the disputed sites was voluntary, Maritime has no plans to resume operations, contracted to sell the authorizations to PSE, Duquesne and Pinnacle, who are not using those sites and have no plans to use them, the Presiding Judge must conclude that service has been permanently discontinued at the 15 sites, by any reasonable reading of *Northeast Utilities*.

As to the remaining 16th disputed site, the World Trade Center, location 33 on WRV374, Maritime had years to find a replacement venue for that station. Maritime did not do so and simply contracted to sell/lease the site to Pinnacle. Pinnacle testifies that Location 33 is one of the sites is within the service area of its PLMRS systems, the site is not being used by Pinnacle and will not be used because doing so would cause interference to Pinnacle operations. Given

---

<sup>21</sup> *Northeast Utilities* at para. 10.

that Maritime has sold/leased the spectrum to Pinnacle who have no plans to resume operations of the former World Trade Center station, the opposite facts are presented here than were presented in *Northeast Utilities*, and therefore the holding in that case mandates a holding here that location 33 on WRV374 has been permanently discontinued.

**C. Fill-in Stations Cannot Preserve Discontinued Site-Based Authorizations**

Given that Maritime, PSE, Duquesne and Pinnacle are not providing service at any of the 16 authorized site-based locations, Maritime is left with the argument that the operation of fill-in stations somehow preserves site-based licenses that are otherwise discontinued. This contention is the lynchpin of Maritime's entire case under Issue (g) and it is simply wrong.

Northeast Utilities makes it crystal clear that fill-in stations do not preserve site-based authorizations that have been discontinued:

**We clarify, however, that whether a station is in operation is determined with respect to the licensed facility; operation of fill-in sites does not render operative an inactive licensed transmitter.**<sup>22</sup>

This statement from the WTB could hardly be any clearer, and it was made in 2009. Maritime has abused the Commission's processes, wasted the resources of the parties and unlawfully warehoused spectrum, all allegedly based on a legal theory that is flatly contradicted by the 2009 ruling of the WTB, that was expressly intended and stated to clarify this very point.

Moreover, it is self-evident that it would be legally impossible for the WTB to have reached any different conclusion. Fill-in stations are only permitted to be operated with the actual service contour of an authorized site-based station.<sup>23</sup> It must follow that where the

---

<sup>22</sup> *Northeast Utilities*, at para. 10, Note 39 (emphasis added).

<sup>23</sup> *Maritime Communications*, Fourth Report and Order, 15 FCC Rcd 22585 (Nov. 16, 2000), para. 12.

licensee is no longer providing service from the authorized site, there is no existing system and fill-in stations cannot lawfully be operated.<sup>24</sup>

Maritime purports to rely upon the Gurss Letter Ruling that Mobex obtained regarding interference protection for fill-in stations.<sup>25</sup> But it is painfully obvious that Maritime's purported reliance on this letter ruling is a shame that fails to provide any basis for Maritime's abusive insistence on taking the 16 abandoned stations into a hearing on Issue (g).

The Gurss Letter Ruling is predicated on Mobex's representation that Mobex was operating site-based stations at authorized locations and that was constructing fill-in stations within the service contours of the existing site-based stations. The WTB expressly held that fill-in stations are only entitled to protection where authorized sites are providing service:

In order to qualify as a fill-in site, the plain language of Section 80.475(b) of the Commission's Rules requires not only that the site be located within the interference contour of one or more licensed stations, but that the fill-in site's interference contour be fully encompassed by the composite interference contour of the licensee's existing system.<sup>26</sup>

It is simply impossible to read the *Gurss Letter Ruling* to mean that fill-in stations can be operated where the main station no longer provides service.

An "existing system" in plain English means one that is providing service, not one that is no longer providing service. Indeed, the entire rationale for fill-in stations is to provide coverage to areas within the service area of an existing station that do not receive good coverage for some

---

<sup>24</sup> *Id.*; *Northeast Utilities*, at para. 10, Note 39.

<sup>25</sup> *E.g.*, Robert M. Gurss, Letter Ruling, 18 FCC Rcd 14439, DA 03-2275 (July 11, 2003) ("Gurss Letter Ruling").

<sup>26</sup> *Gurss Letter Ruling* (emphasis added).

reason.<sup>27</sup> A “fill-in” station in plain English is a station that fills in the coverage area of a main station. If there is no main station, there is no coverage to fill-in.

Maritime’s purported legal theory appears to be that Maritime can sell/lease spectrum to third parties who can operate what are erroneously and unjustifiably referred to as “fill-in stations”, without ever constructing or operating any of the authorized site-based stations. PSE, Duquesne and Pinnacle all admit they are not providing service from the authorized, site-based locations and have no cognizable plans to do so. Therefore, Maritime’s purported legal theory is exposed to be a shame claim that Maritime’s counter-parties can continue to operate fill-in stations indefinitely, despite the discontinuance of the authorized facilities.

Maritime’s shame claim is completely at odds with *Northeast Utilities*, which holds squarely that fill-in operations cannot preserve an otherwise discontinued authorization, and with the *Gurss Letter Ruling*, which holds that fill-in stations are only entitled to protection from a geographic licensee where the contours of the fill-in stations are within the contours of an existing site-based system. Maritime’s legal theory is inconsistent with the plain meaning of Section 80.475(b) of the Rules, as cited in the *Gurss Letter Ruling*, the very ruling upon which Maritime purports to rely.

Section 80.475(b) allows site-based licensees to construct fill-in stations without specific authorization. The rule allows:

Coast stations for which the above specified need not be submitted because the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system....

The “above specified” is an application for a site-based authorization. The rule authorizes stations without specific authorization, *i.e.*, fill-in stations, only where, “the proposed station's

---

<sup>27</sup> Maritime Communications, Fourth Report and Order, 15 FCC Rcd 22585 (Nov. 16, 2000), para. 12.

predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system.” Since Maritime has no existing system, it is not authorized to operate or allow others to operate alleged “fill-in” stations.

Furthermore, Maritime and the Bureau have failed to establish that Maritime and its alleged lessees have the requisite FCC authority for the alleged fill-in operations. In order to use AMTS spectrum for Private Mobile Radio Service (“PMRS”), authority is required under Section 20.9(b) of the rules. Maritime and the Bureau have failed to show that Maritime and its lessees have complied with Section 20.9(b) and obtained the required authorization to operate the alleged fill-in stations as a PMRS radio service. See Public Coast Flexibility Order in FCC 07-87, 22 FCC Rcd 8971 at para. 10.

And even if the Maritime/Bureau had some viable legal theory of “fill-in” stations, which they do not, they have failed to establish the factual predicate for their novel legal theory. With regard to KAE889 and the Pacific Northwest, the facilities being operated by PSE simply are not fill-in stations as PSE is operating the stations pursuant to geographic area licenses. Duquesne abandoned any use of the Maritime frequencies and the WHG750 authorization cannot be preserved by the Presiding Judge based upon Duquesne’s mere “hope” that one day it might use 220 MHz spectrum for meter reading in the Mt. Washington area of Pittsburg, a vague expression of “hope” by a third party who is not even the site-based licensee. Pinnacle is the only party that claims to be operating so-called “fill-in” stations, but Pinnacle testifies that it does not use and has no plans to use the authorized, site-based locations.

**D. The Bureau Has Offered No Contrary Authority**

The Bureau filed a motion for summary decision on December 2, 2013 (“SD Motion”), and the Presiding Judge invited the Bureau to supplement its motion on March 26, 2014 (“SD

Supplement”). Despite having two bites of the apple, the Bureau offered nothing to support allowing Maritime to retain any of the 16 authorizations.

The SD Supplement admitted that neither Maritime nor its alleged “third-party lessees” are operating any of the 16 stations: “Here, however, it is undisputed that neither Maritime nor its third-party lessees are operating the licensed locations specified in the aforementioned license.”<sup>28</sup> In fact, the licensed facilities were not operated for at least *five to seven* years, according to Maritime’s belated admissions.<sup>29</sup> Yet the Bureau asked the Presiding Judge to reward Maritime’s unlawful conduct with retention of 16 stations that are by the evidence, long ago abandoned and terminated.<sup>30</sup>

The Bureau made several arguments in its earlier SD Motion and Supplement that apparently the Bureau is continuing to pursue in its Direct Case, despite that these assertions are contrary not only to the rules and WTB rulings but also the rulings of the Presiding Judge in this

---

<sup>28</sup> SD Supplement at para. 5.

<sup>29</sup> EVH’s position and evidence, in past pleadings, supports much earlier dates, as will be shown on issues of licensee disqualification and license revocation. The Joint Stipulation shows the Bureau is aware of the extended period of discontinuance of numerous Maritime stations. Yet the Bureau has taken no enforcement action against Maritime with regard to prior inaccurate representations to the Commission and the Bureau itself, and the Commission’s rules against warehousing spectrum and intentionally manipulating and distorting the auction of allegedly encumbered spectrum.

<sup>30</sup> Ironically, the Bureau’s assertions in its SD Motion and Supplement contradicted the Bureau’s own earlier Opposition filed February 7, 2013, to a Choctaw motion for summary decision:

10...The Commission has a compelling interest in ensuring that scarce, valuable spectrum does not lie fallow when it could be used to provide service to the public. 26

FN26. *See, e.g.*, Pacific Gas & Electric Co., 26 FCC Red 3465, 3467 (WTB 2011) (“The purpose of the construction and permanent discontinuance rules is [to] ensure use of licensed spectrum, and prevent licensees from warehousing spectrum .... ”); Northstar Technology, LLC, 24 FCC Red 13476, 13479 (WTB 2009) (“We agree with the Applicants that a purpose of section 1.955(a)(3) is to ensure use of licensed spectrum and to prevent its warehousing by a licensee.”); Northstar Technology, LLC, 19 FCC Red 3015, 3022 (WTB 2004) (recognizing that the Commission’s performance requirements are intended “to ensure speedy delivery of service to the public, and to prevent stockpiling or warehousing of spectrum by licensees”).

case on June 17, 2014. It is puzzling that the Bureau continues to pursue the apparent contentions in its Direct Case, in the face of the adverse rulings of the Presiding Judge on June 17 and the full Commission in its denial of *Second Thursday* relief on September 11, 2014 in this same case.

**1. Fill-in Stations Do Not Excuse Abandonment Of The Main Station**

First, the Bureau has claimed and apparently will continue to claim that the Presiding Judge should excuse the abandonment of the stations because the spectrum allegedly is being used by lessees.<sup>31</sup> Yet the Wireless Telecommunications Bureau (WTB) has ruled that operation of fill-in stations cannot excuse abandonment of the main, licensed station, and the Presiding Judge so ruled in rejecting the Bureau motion for summary decision on June 17, 2014:

“However, the operational status of a station is determined with respect to the licensed site and not the operation of fill-in sites that may exist within the licensed spectrum.”<sup>32</sup> The Presiding Judge cited the same cases that the Bureau itself cited in opposing the earlier motion for summary decision by Choctaw:

11. ... Maritime's discontinuance of operations, the record to date indicates that Maritime has failed to operate the majority of its site-based stations for many years. Specifically, Maritime chose to discontinue operations at seventy (70) of its eighty-nine (89) site-based stations as of December 31, 2007, more than five years ago....

\* \* \* \*

13. ... Maritime had fair notice that its failure to operate its site-based stations for several years constitutes permanent discontinuance

---

<sup>31</sup> SD Supplement at para. 9. An actual “lessee” is an entity with a valid and current lease, so the Bureau’s characterization is contradicted by the FCC ULS records, and for PMRS use, also contradicted by the ULS records.

<sup>32</sup> FCC 14M-18, para. 61 (emphasis added).

14. As early as December 2004—a year before Maritime acquired the site-based licenses in question—the Wireless Bureau made clear that “AMTS facilities must be constructed within a specified time and must remain operational in order for the license to remain valid.”

\* \* \* \*

16 ...[I]n *Mobex Network Services, LLC*, 25 FCC Red 3390 (2010), the Commission .... concluded that evidence that a licensee had failed to maintain or operate equipment at a **licensed** location for multiple years “is sufficient to demonstrate permanent discontinuance of operation.” The evidence in question was an affidavit from the property manager ... that the licensee had removed equipment from the licensed location nearly **three** years earlier. ... This decision ... provided Maritime with fair notice as of 2010 that if it did not have equipment at any of its **licensed** locations for multiple years or if any of its equipment did not receive electric power supply for multiple years, the Commission would consider those stations permanently discontinued.

\* \* \* \*

20. In light of this precedent, a reasonable person also would have been able to identify, with ascertainable certainty, that it could not meet its operating requirements by simply having equipment at the licensed locations that was capable of providing service but was not doing so. Merely building a facility that was capable of utilizing the licensed spectrum but then allowing it to sit dormant for years without using the spectrum would be at odds with the Commission's licensing structure as a whole and would make a mockery of the Commission's long-standing policy against warehousing spectrum.<sup>33</sup>

Indeed, the Bureau’s stated intent to continue to support Maritime’s retention of authorizations for 16 long abandoned and automatically terminated stations “would make a mockery of the Commission’s long-standing policy against warehousing spectrum.” The entire Direct Case of the Bureau is that Maritime should be allowed to warehouse spectrum indefinitely while it looks for buyers.

---

<sup>33</sup> Bureau Opposition to Choctaw at paras. 13, 14, 16 and 20 (emphasis added).

## 2. Abandoned Authorizations Cannot Be Sold To Public Safety Entities

Second, the Bureau attempted to enhance its self-contradicted claims regarding fill-in stations with the unsupported allegation they are being used for “public safety”.<sup>34</sup> But any continuation of that argument would defy the Presiding Judge who rejected this allegation in FCC 14M-18:

66. Finally, Maritime, the Bureau, and other parties argue that the Presiding Judge should take the public interest into account because much of the spectrum that Maritime has leased<sup>35</sup> to third parties is used "for critical infrastructure and public safety communications." For instance, Pinnacle argues that the public interest requires that the Presiding Judge's decision should protect its ongoing<sup>36</sup> operations which use Maritime spectrum or else "the State of New Jersey will incur financial, operational, and life safety risks." The moving parties should be aware that the Presiding Judge has been tasked to "determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission's rules." Public safety interests served by the use of the licensed spectrum are not relevant to deciding that issue. Further, the Commission has not delegated the authority to waive any Commission rules to the Presiding Judge. (Emphasis added)

Moreover, the full Commission rejected this notion in disposing of Maritime's *Second Thursday* petition with regard to the self-professed “critical” entities (apart from the railroad SCRRRA). Ironically, *none* of the alleged lessees on whose behalf the SD Supplement made this allegation. Further, ULS does not show any current leases, only long-ago defunct ones, as Havens demonstrated in response to the Judge's request for more information on the SD Motion. Nor does ULS show any authority for these lessees to use the spectrum for PMRS for which they would need either a rule waiver or a granted application under rule §20.9(b). Moreover, ULS

---

<sup>34</sup> Supplement at para. 9.

<sup>35</sup> ULS shows there are *no leases* and *no authority* of the alleged lessees to use the spectrum for the alleged public-safety PMRS uses.

<sup>36</sup> This alleged fact of ongoing use is in serious dispute, as ENL-VSL commented earlier, according to records from the State of New Jersey being released under the State's Open Public Records Act, contrary to Pinnacle's designation of such documents as highly confidential attorney-eyes-only.

shows PSE holds the AMTS geographic area licenses that cover its utility service territory and NJTA and NJSEA have 800 and 220 MHz public safety licenses, and therefore neither of them needs Maritime spectrum for “public safety.” The contention is both contrary to law and fact.

### **3. Alleged Fill-in Operations Are Unauthorized**

Third, and perhaps most alarmingly, the SD Supplement failed to inform the Presiding Judge of the law relevant to the Bureau/Maritime claim that abandonment of the 16 stations should be excused because operation of some of them could cause interference to the alleged spectrum lessees. The SD Supplement recited that the Presiding Judge specifically asked for precedent to support the claim that a facility has not permanently discontinued if its operation is restricted by the operations of other facilities.<sup>37</sup> The SD Supplement represents that: “no precedent directly addresses the question...”<sup>38</sup>

On the contrary, the Commission’s rules explicitly state that a fill-in station is one that operates within the actual service contour of an existing system, and the WTB has so ruled.<sup>39</sup> Thus, there is law directly on point, namely that fill-in stations can only be operated within the actual service contour of an existing AMTS system, so the notion that the main station could interfere with a “fill-in” station is directly contrary to the rules. The interference excuse also contradicts the rulings of the WTB and the Presiding Judge that fill-in stations do not count as operation of the licensed station. The ruling that fill-in stations do not excuse abandonment of the main station would be completely undermined by acceptance of the excuse that the main station is shut down so as not to interfere with fill-in operations. The interference excuse is just

---

<sup>37</sup> Supplement at para. 10.

<sup>38</sup> Supplement at para. 10.

<sup>39</sup> 47 C.F.R. Section 80.475(b); *Robert M. Gurss, Letter Ruling*, 18 FCC Rcd 14439, DA 03-2275 (July 11, 2003).

another attempt to use fill-in stations to excuse abandonment of the main station and the WTB and Presiding Judge already have ruled to the contrary.<sup>40</sup>

V. **THE FACTS SHOW THAT ALL 16 AUTHORIZATIONS ARE PERMANENTLY DISCONTINUED AND AUTOMATICALLY CANCELLED**

EVH offers the following additional factual summary and analysis of the Bureau Direct Case testimony. The testimony shows no operations at any of the 16 sites and no fill-in stations operated by PSE, Evergreen or Duquesne. Only Pinnacle purports to claim fill-in stations and those do not qualify as such and are not authorized by the FCC or needed by NJTA or NJSEA.

As summarily discussed above: Maritime alleges that site leases are a basis for it to keep the 16 stations. However, the alleged lease or leases are not supported in ULS records. The same applies to the other entities involving the 16 Stations alleging fill-in stations. While some lease applications were filed, they were either not acted on by the Wireless Bureau, or prior to FCC 11-64, were accepted by the FCC but terminated, expired or withdrawn years ago. The details are on ULS. It appears that the Wireless Bureaus has logically applied the Jefferson

---

<sup>40</sup> Maritime cannot cause itself interference since Maritime controls the operation of its licensed stations and the terms of its spectrum leases, and there are many well-known means to avoid interference such as not using the same channels at stations in proximity, directional antennas, and other techniques. Thus, the Presiding Judge had no difficulty disposing of the nonsensical excuse for abandonment based on interference in FCC 14M-18 (emphasis added, footnotes deleted):

63. Maritime and the Bureau also ask that the Presiding Judge take into account facts showing that Maritime cannot operate several licensed facilities without interfering with the operations of other licensed facilities that are subject to spectrum lease agreements....

64. When a licensee enters into a spectrum lease agreement, it remains responsible for ensuring that the operation of licensed facilities complies with Commission rules. If Maritime enters a spectrum lease agreement that somehow prevents its site-based licensed facilities from operating as required under the Commission's rules, it acts at its peril. The movants' argument, that Maritime should be excused from complying with the Commission's rules because it has voluntarily entered into spectrum licensing agreements that disallows compliance with those rules, is unpersuasive and defies reason....

Radio policy to MCLM leasing after FCC 11-64 was released and that Maritime and these parties alleging fill-in stations have accepted that and not attempted to submit and get FCC acceptance of any leases in many years. The only two more recently filed lease applications that show up in ULS are for Evergreen and Puget Sound Energy, but those are held in pending status (and would involve only PMRS operation, but the subject licenses are CMRS regulatory status), and in the case of Puget Sound Energy it has admitted it did not commence any operations on AMTS spectrum until September 2012, almost 5 years after Maritime admits it ceased all operations in December 2007. In any case, the assertions before the Presiding Judge in this proceeding are contrary to official FCC ULS lease records. Fill-in stations operated under invalid leases are unlawful and cannot count for anything but sanctionable violations. In addition, as just noted, Maritime has stated that it ceased all operations of site-based AMTS by at least December 2007, which was well before it filed any lease applications years later for any of the 16 stations.

**A. PSE Is Not Operating The Authorized Stations Or Any Fill-in Stations**

PSE did not supply direct case testimony, but it did answer interrogatories and those contain admissions that are fatal to Maritime's claims as to any of the KAE889 locations. PSE admits that its private land mobile radio system ("PLMRS") was constructed using geographic service area licenses that ENL and Skybridge Spectrum Foundation ("Skybridge") sold to PSE in 2010.<sup>41</sup>

PSE has already constructed and is operating the radio network that PSE needs using its geographic service area licenses that it obtained from ENL and Skybridge. PSE states, "PSE has constructed a wide-area private land mobile communications network that PSE uses for internal

---

<sup>41</sup> Skybridge is a non-profit entity created by Mr. Havens that holds certain geographic area license spectrum.

communications among its employees and contractors....”<sup>42</sup> PSE states, “All of the base station transmitter sites used in PSE’s land mobile network are within the license area boundaries of the geographic AMTS licenses (Call signs WQMZ553 and WQMZ554) that PSE acquired in 2010 from [ENL and Skybridge] through license partitioning and disaggregation in FCC File Nos. 0004258631 and 0004258642, respectively.”<sup>43</sup>

The PSE PLMRS system uses modern technology that is based on low power, low site transceivers. PSE states, “PSE’s current network design is based on use of transmitter sites operating at relatively low power (generally less than 20 watts ERP) and low antenna sites, both to improve frequency reuse and to minimize the potential for interference to reception of broadcast signals on television channels 10 and 13. . . .”<sup>44</sup> EVH previously has explained that the Commission transitioned AMTS to geographic area licensing that allows the licensee to place radio cell sites anywhere within its geographic license with obtaining site-by-site authority. The geographic area license regime replaced the obsolete site-based license regime that was based on obsolete technology that used high-power, high site transceivers.

Geographic area licensees such as PSE, that use modern technology, nevertheless may be required to protect the operations of legacy, site-based licensees within their geographic service territory. PSE identifies five of the locations on KAE889 as being a “Licensed Facility” that PSE was concerned it would have to protect. PSE states, “A number of PSE’s transmitter sites operating under its geographic licenses also fall within, or have signal contours that overlap, the

---

<sup>42</sup> PSE Answers to Bureau’s First Set of Interrogatories, Aug. 4, 2014 (“PSE First Answers”) at 5.

<sup>43</sup> PSE First Answers at 6.

<sup>44</sup> PSE First Answers at 6.

signal contour of the Licensed Facility.”<sup>45</sup> In PSE’s answers to interrogatories, the term Licensed Facility is defined to as locations 4, 20, 30, 34 and 48 on KAE889.<sup>46</sup>

PSE dealt with Maritime’s site-based authorizations by entering into an agreement with Maritime. PSE states, “Because of PSE’s need to build and operate stations in the vicinity of the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], PSE entered into an Asset Purchase Agreement and a related Spectrum Manager Lease Agreement with Maritime in May 2010.”<sup>47</sup> Because PSE is the geographic licensee, PSE will have no need for the site-based authorizations and will simply cancel them.

PSE purports to insert two caveats in respect of this conclusion, but upon examination neither of these caveats makes any sense or warrants a hearing. First, PSE states that although PSE operates a low power, low site system that does not use any of the site-based transmitter sites, one day PSE may want to use one of the sites. PSE alleges, “PSE’s current network design does not require operation of base station facilities at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889], but PSE has not ruled out the possibility of installing transmitting equipment at the Licensed Facility if necessary to improve coverage to certain areas, as a back-up transmitter site for disaster recovery or emergency coverage...or for some other purpose.”<sup>48</sup> This claim appears to have been interposed solely to attempt to assist Maritime in its claim that

---

<sup>45</sup> PSE First Answers at 6.

<sup>46</sup> PSE First Answers at 5. It should be noted that PSE omits two of the seven locations on KAE889, namely locations 3 and 13. This omission means that PSE does not operate facilities within any former alleged contours of locations 3 and 13 and, therefore, it is undisputed that locations 3 and 13 are permanently discontinued and automatically terminated, even if the Presiding Judge accepts Maritime’s legal theory that an abandoned Maritime site-based station is somehow preserved based on someone else’s operation of what Maritime erroneously characterizes as fill-in stations.

<sup>47</sup> PSE First Answers at 6.

<sup>48</sup> PSE First Answers at 6.

the site-based authorizations have not been permanently abandoned. PSE, as the geographic area licensee, can place transmitters anywhere within its service territory, “to improve coverage...as a back-up...or for some other purpose”.

Furthermore, the allegation is non-cognizable and cannot be relied upon by the Presiding Judge to find that the KAE889 authorizations have not been permanently abandoned. A statement that “PSE has not ruled out the possibility” does not amount to a cognizable statement of intent. In fact, PSE admits that, “PSE has taken no steps, and has no definite plans, to operate transmitters on AMTS frequencies at the Licensed Facility [*i.e.*, locations 4, 20, 30, 34 and 48 on KAE889].”<sup>49</sup> This candid admission shows that PSE’s attempted claim that it has not ruled out the possibility of using a site-based location, is mere puffery.

The second caveat that PSE attempts to introduce with regard to the logical conclusion that PSE will simply cancel the Maritime site-based authorizations if PSE ever gets them, is the notion that PSE somehow could use two of the locations to extend its coverage area beyond its geographic license territory. PSE attaches this caveat, which it labels “Note 2”, to two of the five locations on KAE889 that are within PSE’s geographic service area, namely locations 4 and 20.<sup>50</sup> Thus, PSE admits that it has no conceivable use for three of the five Maritime locations within the PSE geographic service area namely locations 30, 34 and 48.

Upon examination, the caveat with respect to these two location rings hollow. PSE admits that PSE as the geographic license holder could continue to operate its PLMRS system without any of the Maritime site-based authorizations:

All of PSE’s so-called Fill-in Sites operate within the geographic area of PSE’s geographic AMTS licenses (Call Signs WQMZ553 and

---

<sup>49</sup> PSE First Answers at 7.

<sup>50</sup> PSE First Answers at 5 and 7

WQMZ554). As the holder of the geographic licenses PSE would continue to have authority, by virtue of its geographic AMTS licenses, to operate at the so-called Fill-in sites even if the Site-based authorizations were terminated.<sup>51</sup>

PSE nevertheless alleges that cancellation of the Maritime site-based authorizations could impact PSE's operations at "the northernmost and southernmost portions of PSE's service area" because, "PSE's signal contours extend across the boundaries of its geographic license areas but within the authorized contours of the Licensed Facilities [*i.e.*, locations 4 and 20]."<sup>52</sup>

The "northernmost portion of PSE's service area" is the Canadian border. The claim that Maritime's site based authorization somehow gives PSE rights in Canada is fanciful. However, the Presiding Judge need not delve into US/Canada radio treaties. The claim that PSE needs service contours in Canada is irrelevant because PSE is a US utility that serves customers in a "service territory in the Puget Sound area of western Washington", *i.e.*, the U.S., and not Canada.<sup>53</sup>

PSE admits that it could adjust its operations to confine them to its geographic service area.<sup>54</sup> But PSE claims that adjusting its signal contour at the Canadian border "would not be trivial exercise."<sup>55</sup> In fact, it would be a trivial exercise because all geographic area licensees have to protect the border of their geographic licenses. It is not sound practice for a geographic licensee to attempt to use a legacy site-based authorization to extend the boundary of its

---

<sup>51</sup> PSE Answers to Enforcement Bureau Second Set of Interrogatories filed Aug. 6, 2014 ("PSE Second Answers") at 7.

<sup>52</sup> PSE Second Answers at 7. See also PSE First Answers at 5 for identification of the two sites to which Note 2 refers and at 7 for the Note 2 that claims those two sites give PSE site-based service contours beyond its geographic area licenses.

<sup>53</sup> PSE Second Answers at 3.

<sup>54</sup> PSE Second Answers at 8.

<sup>55</sup> PSE Second Answers at 8.

geographic license. A decision endorsing such a practice would be contrary to the policies underlying the conversion of AMTS to geographic licensing. Moreover, the Commission's files show that PSE has other licensed spectrum in other frequency ranges that PSE can use.<sup>56</sup>

PSE provides no information with regard to the alleged need at the southernmost border and does not claim any hardship to adjust its operations at the southernmost border. Therefore, the claim as to the southernmost border is not cognizable.

In sum, PSE's need for spectrum already has been amicably resolved by EVH through the sale of geographic license area spectrum to PSE. Of the five locations PSE claims to be leasing from Maritime, PSE admits it has no need for three of them, locations 30, 34 and 48. Although PSE claims that it could use two locations, 4 and 20, to extend its service contour beyond its geographic license area at the northernmost and southernmost borders, these claims are specious as shown above.

**B. Evergreen Is Not Operating Any Maritime Or Other 220 MHz Spectrum**

The Bureau submitted written direct testimony from Evergreen, which like PSE is located in the Pacific Northwest and therefore potentially would have pertained to KAE889. Evergreen candidly admits that Evergreen ceased using any Maritime spectrum, and indeed any 220 MHz spectrum, as of September 7, 2014.<sup>57</sup> Moreover, Evergreen fails to identify specific Maritime site-based authorizations, describing the allegedly leased spectrum only by call sign without locations, "The call sign for this spectrum is KAE889."<sup>58</sup> Evergreen refers to "site 1" and "site 2", presumably Evergreen internal designations, as KAE889 does not have a location 1 or 2.

---

<sup>56</sup> *E.g., Puget Sound Energy, Inc.*, 27 FCC Rcd 7010, DA 12-958 (June 19, 2012)(referencing thirty-two PLMR stations, and ...twelve narrowband PLMR stations for which it is licensed).

<sup>57</sup> Direct Testimony of William Thackeray, Manager, Accounting and Purchasing at Evergreen School District 114, EB Exhibit 1F ("Evergreen Test.") at para. 7.

<sup>58</sup> Evergreen Test. at para. 3.

Thus, Evergreen's testimony fails to establish a link between Evergreen and any of the seven disputed locations on KAE889.<sup>59</sup>

**C. Duquesne Is Not Operating Any Maritime Spectrum**

One of the sixteen stations in Issue (g) involves the single site license WHG750 which specifies a station location near Pittsburg, Pennsylvania. EVH Trial Exhibit 27, Response to Interrogatories filed by Maritime on February 6, 2012, contains a table of alleged construction dates Maritime stations and for WHG750 there is no construction date. Likewise, EVH Exhibit 40, Amended and Further Supplemental Response to Interrogatories filed by Maritime on March 6, 2012, contains the revised table and also shows no construction date for WHG 750. Thus, Maritime admitted this station was never constructed.

Nevertheless, the Bureau filed direct case testimony from Duquesne as the alleged lessee of WHG750 spectrum, even though the Maritime answers to the Bureau's interrogatories fail to show the station was ever constructed.<sup>60</sup> EB Exhibit 1E. The Duquesne testimony candidly admits that Duquesne did not construct or operate the authorized site-based station, only what it claims were "fill-in" stations, which it now further admits it has abandoned. Duquesne replaced the use of Maritime WHG750 spectrum with 900 MHz facilities that Duquesne operates pursuant to other operating authorities.

According to the Duquesne testimony, on February 18, 2010, Duquesne entered into an agreement to purchase from Maritime spectrum on WHG750 and to lease the spectrum pending

---

<sup>59</sup> Evergreen Test. at para. 3.

<sup>60</sup> Testimony of Lee Pilar, Senior Communications Engineer at Duquesne, EB Exhibit 1E ("Duquesne Test.").

consummation of the purchase.<sup>61</sup> Duquesne says that it constructed and operated “towers” using the WHG750 spectrum beginning in May, 2010. Ten towers are listed.<sup>62</sup>

However, Duquesne admits that it ceased using WHG750 spectrum at three of the towers in February, 2012.<sup>63</sup> Duquesne further admits that it ceased using the WHG750 spectrum at the rest of the towers “later”, without specifying the exact date.<sup>64</sup> Thus, Duquesne admits it ceased using any of the Maritime spectrum, as long ago as February, 2012, in some areas, and in the rest of the Duquesne service territory at some unspecified “later” date.

Duquesne offers the caveat that it hopes to resume the use of 220 MHz spectrum at some point in the future for smart metering in the Mt Washington area of Pittsburg.<sup>65</sup> This vague hope without providing specific plans or alternatives, or the costs thereof is simply non-cognizable. Also, the Mt Washington area of Pittsburg is not defined and there is no assertion that Duquesne would use Maritime spectrum elsewhere in its service territory. Thus, cancellation of the WHG750 license would not have any cognizable impact on the current or future operations of Duquesne and the claims of Maritime that cancellation of its license would adversely affect utility operations and public safety ring hollow.

**D. The New Jersey Entities Do Not Need Maritime Spectrum**

Pinnacle testifies that Pinnacle leased spectrum from Maritime and constructed an 18 site PLMRS system for NJTA and a single site PLMRS system for NJSEA.<sup>66</sup> Pinnacle testifies that

---

<sup>61</sup> Duquesne Test. para. 4.

<sup>62</sup> Duquesne Test. para. 5.

<sup>63</sup> Duquesne Test. para. 6.

<sup>64</sup> Duquesne Test. para. 7.

<sup>65</sup> Duquesne Test. para. 7.

<sup>66</sup> Testimony of Larry Allen, Director at Pinnacle, EB Exhibit 1G (“Pinnacle Test.”), para. 2.

the PLMRS systems operate within the combined contours of five of the authorized locations on WRV374, namely locations 14, 15, 18, 25 and 33.<sup>67</sup>

Earlier sworn testimony from Pinnacle casts doubt on the claim that Pinnacle is using five locations on WRV374.<sup>68</sup> For example, EVH Exhibit 2, Pinnacle Reply to SkyTel Opposition filed January 6, 2012, states on page 3 that Pinnacle could be harmed by the outcome of this proceeding because the preceding "might potentially result in the cancellation or revocation of either the site-based license (KRV374) or the geographic auctioned license (WQGF315) that Pinnacle leases from Maritime and that Pinnacle has constructed for the reference two State of New Jersey agencies." EVH Exhibit 40, Amended and Further Supplemental Response to Interrogatories filed by Maritime on March 16, 2012, states in answer 8 on page 3 that Maritime is leasing WRV374 locations 15 and 25 to Pinnacle, only two of the five now claimed locations. EVH Exhibit 65, Maritime Supplemental Response filed August, 9, 2012 on also states, on page 2, that Maritime is leasing WRV374, locations 15 and 25 to Pinnacle. EVH Exhibit 48, Pinnacle Wireless Response dated April 9, 2014, states in paragraph 6 that Pinnacle is using Maritime site-based license WRV374 in the northern part of New Jersey and Maritime geographic area license WQGF315 in the southern part of New Jersey. So it is unclear whether Pinnacle is really using 5 Maritime site-based authorizations, or only 2.

Even if the Presiding Judge were to accept Pinnacle's claim of use of five locations on WRV374, this does not justify Maritime's claim of non-abandonment since Pinnacle admits that its radio facilities for NJTA and NJSEA, "do not operate and have never operated from the

---

<sup>67</sup> Pinnacle Test., para. 2.

<sup>68</sup> Even if the Presiding Judge were to accept Pinnacle's claim of use of five locations on WRV374, eight locations are in dispute and Pinnacle makes no claim of use of locations 16, 35 and 40, so it cannot reasonably be disputed that those three locations are abandoned.

locations listed on the WRV374 license.”<sup>69</sup> Moreover, Pinnacle asserts that if operations were resumed at the authorized locations on WRV374, such operations would interfere with the NJTA and NJSEA PLMRS systems. Pinnacle states, “...Pinnacle believes that operations at the licensed locations would interfere with the efficient operation of the fill-in sites constructed by Pinnacle.”<sup>70</sup> Pinnacle further states that, “Pinnacle has not taken any steps to resume operations at any of the locations listed on the WRV374 license and has no affirmative plans for doing so.”<sup>71</sup>

As was the case with PSE described above, Pinnacle intentionally chose not to use the authorized locations because WRV374 site-based authorizations were intended for obsolete, high power/high site technology. Pinnacle uses modern technology that is designed for low power/low site facilities. As Pinnacle explains, the use of modern, low power/low site technology will, “allow for better coverage, more efficient spectrum utilization and reuse, and the provision of a more robust service to users than would be afforded by operating from the locations listed on the WRV374 license.”<sup>72</sup>

It is readily apparent that the authorized locations on WRV374 have been permanently abandoned because those authorizations do not comport with modern technology. Modern technology that uses low power/low site facilities comports with the new geographic area licensing regime that allows facilities to be placed anywhere within the authorized geographic service area. Thus, it can only be concluded that cancellation of the WRV374 site based

---

<sup>69</sup> Pinnacle Test., para. 2.

<sup>70</sup> Pinnacle, Test., para. 3.

<sup>71</sup> Pinnacle, Test., para. 3.

<sup>72</sup> Pinnacle, Test., para. 3.

authorizations will not harm NJTA and NJSEA so long as they can obtain geographic license spectrum.

Moreover, the Presiding Judge can see in the Commission's own files that NJTA and NJSEA are not reliant upon the Maritime spectrum and have numerous other licenses. NJTA is building its own statewide trunked radio system using 800 MHz licenses that NJTA holds. This is a matter of record at the Commission. For example, on August 14, 2014, NJTA wrote a letter to the Commission explaining that NJTA is constructing a "Statewide 800 MHz Trunked Radio System" and noting that NJTA holds "the following FCC authorized radio service call signs assigned to the NJTA: 1. WSB622 2. WSB623 3. WSB624 4. WSB625 5. WSB626."

Likewise, the ULS system shows that NJSEA already holds numerous FCC licenses that NJSEA can and does use for radio communications, including the following call signs: WQDS589, WQET700, KDX707, KZA706, WNWF722, WPBS238, WPCE403, WPFQ273, WPLX616, WPSP220, WQDS589, and WQET700.

These are public safety entities. As such, they are entitled to spectrum for their operations. In fact, the FCC ULS database shows that NJTA and NJSEA already hold numerous authorizations. Accordingly, the New Jersey authorities will not be harmed by termination and cancellation of the WRV374 authorizations and there is no need for a hearing on Issue (g) as to those authorizations.

**E. Pinnacle Credibility Is Subject To Doubt**

Mr. Mike Hayford of Pinnacle, according to Maritime, entered the agreement or agreements with Maritime for Pinnacle and appears to have carried on actions thereunder regarding Maritime's site-based licensed stations and spectrum. However, per public announcement by the parent company of Pinnacle (*e.g., see* the Internet links below), Mr. Hayford was fired for taking part in Pinnacle fraud that the parent company admitted to, subject

to various subsequent litigation. Maritime and Pinnacle failed to disclose that. References can be found by entering in Google “Pinnacle Hayford Fraud”, including the results below and other relevant results.

1. See: <http://www.bizjournals.com/philadelphia/news/2013/04/15/blue-bell-company-fires-cfo-due-to.html?page=all>. This includes, *inter alia*:

UniTek Global Services Inc. has fired its chief financial officer and plans to restate previous financial results as a result of alleged fraudulent activities unearthed at its Pinnacle Wireless division. The Blue Bell, Pa., company, which provides outsourced infrastructure services to the telecommunications industry, said an ongoing investigation being conducted by its board of directors’ audit committee determined that several Pinnacle Wireless employees allegedly engaged in fraudulent activities that resulted in improper revenue recognition. As a result of the investigation, UniTek fired Ronald J. Lejman, its CFO and treasurer; Kevin McClelland, its controller and chief accounting officer; Pinnacle Wireless President Michael Hayford; several other Pinnacle Wireless employees; and an employee in its finance department. None of the fired employees will receive severance.

2. See: [http://www.rosenlegal.com/media/casestudy/44\\_UnitekComplWeb.pdf](http://www.rosenlegal.com/media/casestudy/44_UnitekComplWeb.pdf). This includes, *inter alia* (emphasis and text in brackets added):

#### CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

1. This is a federal securities class action against UniTek [parent company of Pinnacle Wireless] and certain of its officers and/or directors, brought on behalf of all persons or entities who purchased or otherwise acquired shares of UniTek securities between May 18, 2011 and April 12, 2013, inclusive (the "Class Period"), seeking to pursue remedies under §§10(b) and 20 (a) of the Securities Exchange Act of 1934 (the "Exchange Act"). [See footnote 9.] The Exchange Act claims allege that Defendants engaged in a fraudulent scheme to artificially inflate the Company's stock price. As a result of the fraud described below, the Company has lost a substantial portion of its value.

2. Defendant UniTek is a provider of engineering, construction management and installation fulfillment services to companies specializing in ... two-way radio, .... land mobile radio applications....

28. In April 2011, UniTek announced that it had closed the acquisition of Pinnacle Wireless, a two-way radio and wireless communications systems integrator

specializing in large-scale communications projects for the transportation, public safety, entertainment, hospitality and enterprise-level commercial real estate industries....

46. On April 12, 2013, UniTek issued a press release announcing the restatement of its financials.... it was determined that several employees of the Company's Pinnacle Wireless subsidiary engaged in fraudulent activities that resulted in improper revenue recognition.... In connection with the internal review ... the Company also announced the ... terminations of Michael Hayford, President of the Pinnacle Wireless division, several other employees.... None of the terminated individuals will receive severance.

**F. The Self-Serving Testimony of Maritime and Choctaw Is Entitled To No Weight**

Although the Bureau saw fit to introduce direct testimony from Maritime and Choctaw, their testimony simply confirms that Maritime abandoned efforts to operate the businesses that Maritime acquired from Mobex and others. For example, Mr. Reardon testifies that Maritime gave up on trying to operate the former Mobex stations that Reardon sold to Maritime when he headed Mobex, and then came over to Maritime to attempt to operate. Mr. Reardon worked with various brokers to attempt to find a buyer for the entire collection of Maritime spectrum but could not and ended up making some piecemeal sales to PSE, Evergreen, Duquesne and Pinnacle. Although Maritime attempts to characterize itself as making efforts to put the 16 stations back into operation, the efforts basically boil down to selling the authorizations to these entities with interim leases.

Therefore, the Reardon and other Maritime/Choctaw testimony adds nothing to the testimony of the buyers/lessors of the spectrum, PSE, Evergreen, Duquesne and Pinnacle, that has been thoroughly analyzed above. Application of the law to the facts set forth by PSE, Evergreen, Duquesne and Pinnacle can only result in a conclusion that operations at the 16 disputed stations are permanently discontinued and the authorizations cancelled for the reasons set forth above. The Maritime testimony to the effect that Maritime entered into sales contracts/interim leases with PSE, Evergreen, Duquesne and Pinnacle adds nothing to the

Maritime case and on the contrary shows that Maritime is engaged in spectrum warehousing and selling based solely on willful, intentional and repeated failure to reported discontinuance of operations and automatic cancellation.

**VI. CONCLUSION**

Maritime and the Bureau admit that in all 16 cases the site-based operations were discontinued in 2007 and 2009, five to seven years ago. Under the rules, the 16 authorizations automatically terminated and cancelled. Maritime's novel theory of based on fill-in operations cannot save the 7 KAE889 authorizations because PSE is not operating fill-in stations but rather geographic area license stations. Evergreen has no operations on AMTS spectrum as of September 7, 2014. WHG750 also cannot be preserved on a fill-in theory because Duquesne ceased any such operations, at some sites as long ago as 2012. While Pinnacle claims to operate fill-in stations for 5 of the 8 sites on WRV374, even those 5 sites cannot be preserved based on Maritime's novel fill-in theory because Pinnacle admits the main sites aren't operating, there are no plans to resume their operations and they are mutually exclusive with the so-called fill-in stations.

Respectfully submitted,

/s/

---

James A. Stenger  
Chadbourn & Parke, LLP  
1200 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 974-5682

November 25, 2014

**CERTIFICATE OF SERVICE**

The undersigned, a secretary at Chadbourne & Parke, LLP, hereby certifies that she has on this 25<sup>th</sup> day of November, 2014, mailed by first class United States mail true and correct copies of the foregoing *Trial Brief on Issue (g)* to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Pamela S. Kane  
Deputy Chief  
Investigations and Hearings Division Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C330  
Washington, DC 20554

Sandra DePriest  
Maritime Communications/Land Mobile LLC  
206 North 8th Street  
Columbus, MS 39701

Dennis C. Brown  
8124 Cooke Court  
Suite 201  
Manassas, VA 20109  
*Counsel for Maritime Communications/Land Mobile LLC*

Jeffrey L. Sheldon  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
*Counsel for Puget Sound Energy, Inc.*

Wesley Wright  
Jack Richards  
Keller & Heckman LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001  
*Counsel for Atlas Pipeline — Mid Continent LLC; DCP Midstream, LP;  
Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson  
County Rural Membership Electric Cooperative*

Charles A. Zdebski  
Gerit F. Hull  
Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
*Counsel for Duquesne Light Co.*

Paul J. Feldman  
Harry F. Cole  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17th Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
*Counsel for Southern California Regional Rail Authority*

Matthew J. Plache  
Law Office of Matthew J. Plache  
5425 Wisconsin Avenue, NW  
Suite 600, PMB 643  
Chevy Chase, MD 20815  
*Counsel for Pinnacle Wireless Corp.*

Albert J. Catalano  
Keller & Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, DC 20001  
*Counsel for Dixie Electric Membership Corp.*

Robert J. Keller  
Law Offices of Robert J. Keller, P.C.  
PO Box 33428  
Washington, DC 20033  
*Counsel for Maritime Communications/Land Mobile LLC*

Robert G. Kirk  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
*Counsel for Choctaw Telecommunications, LLC  
and Choctaw Holdings, LLC*

Warren Havens  
Atlis Wireless & Companies  
2509 Stuart Street  
Berkeley CA 94705  
Attn: Jimmy Stobaugh

\_\_\_\_\_  
/s/  
Lisa C. Colletti